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VIA FACSIMILE & U.S. MAIL

Comments on Class II Classification
Standards
National Indian Gaming Commission
Attn: Penny Coleman
1441 L Street, Suite 9100
Washington, DC 20005

Re: Comments on Proposed Class II Classification Standards

Dear Ms. Coleman:

These comments are being submitted on behalf of the Lytton Band of Pomo Indians (Tribe) in regard to the National Indian Gaming Commission's (NIGC) proposed classification standards for Class II gaming (Classification Standards). These comments are intended as a supplement to concerns raised by the Tribe during its meeting with the NIGC on July 27, 2006. Please be advised, however, that the Tribe does not consider the brief one-half hour meeting on July 27, 2006, or this comment letter to be sufficient consultation, particularly in light of the severe detrimental effect the proposed standards will have on the Tribe, and expects additional and ongoing consultations to be held between the Tribe and the NIGC throughout the rulemaking process.

As an initial matter, the Tribe wants to make it clear that while the Tribe may have focused on a number of specific issues both at the July 27th session and in this comment letter, this does not mean that the Tribe concedes that other areas of the Classification Standards are acceptable and the Tribe reserves its right to comment or otherwise address such issues further at a later date.

The NIGC'S proposed Classification Standards include language that will prohibit possession and use of the Tribe's currently acceptable Class II bingo devices. Such prohibitions will have devastating economic impacts to the Tribe as all of the Class II devices currently operated at the Tribe's gaming facility will be prohibited by the proposed Classification Standards. The Tribe is troubled by the fact that the NIGC appears to have completely disregarded its own precedent to appease the desires of the Department of Justice.

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The Tribe is concerned that the NIGC has not considered the economic impact the Classification Standards will have on Tribes or the feasibility of designing a device capable of satisfying the proposed Classification Standards. In addition, the Tribe is deeply concerned by the fact that the NIGC, through the Classification Standards, is attempting to amend the statutory definitions of bingo contained in the Indian Gaming Regulatory Act (IGRA) rather than interpreting IGRA.

THE PROPOSED CLASSIFICATION STANDARDS WILL RESULT IN A SEVERE DETRIMENTAL ECONOMIC IMPACT ON THE TRIBE

IGRA was enacted to "provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency and strong tribal government." 25 U.S.C. §2702(1). With respect to Class II gaming, the Courts have viewed this purpose broadly by balancing these objectives with the provisions of both IGRA and the Johnson Act. By outlawing all of the Tribe's existing machines, the Classification Standards will produce the opposite effect. Rather than promoting tribal economic development and self-sufficiency, the Classification Standards will result in a severe negative economic impact on the Tribe.

The Lytton Tribe has approximately 253 enrolled tribal members, over fifty percent (50%) of which are children. Approximately fifteen percent (15%) of the Tribe's members are homeless, while nearly seventy five percent (75%) of the members live in substandard housing. Almost half of the adult members are unemployed and live at or near poverty levels. Understandably, with these kinds of statistics, it is vital that Lytton be able to pursue viable economic development to allow it to assist its members.

The Tribe currently operates a Class II gaming facility located in San Pablo, California, which is approximately 20 miles north of San Francisco. It is clear that a Class III compact is not feasible for the Tribe at this time as the Tribe has been unable to obtain a Compact with the State of California. Despite good faith negotiations by the Tribe with the State of California, and despite the fact that the Tribe agreed to pay the State the exorbitant rate of 25% of its Casino's net win, the State Legislature has refused to ratify a compact. Thus, the Tribe is permitted to conduct only Class II gaming. As the NIGC is aware, as a newly restored Tribe which lost its reservation, Class II gaming operation is the Tribe's only economic development resource available at this point. Thus, the currently proposed Classification Standards would effectively shut down the Tribe's Casino which would result in a severe negative economic impact on both the Tribe and the local community.

Since opening the doors to its Casino, the Tribe has been able to institute programs to benefit its tribal members and help raise them out of the poverty and unemployment that they have faced throughout their lifetimes. Among the programs developed by the Tribe to benefit its members are: childcare, scholarships for vocational and adult education, and a medical assistance program designed to cover medical costs not covered by insurance or other programs. The Tribe is also in the process of developing a program to provide its seniors with in-home assistance. In addition, the Tribe has been able to provide small per capita distributions to its tribal members to further assist them with living expenses.

In addition to providing the Tribe with a means to improve the lives of its tribal members, the Casino also provides the Tribe with the financial resources to assist the City of San Pablo and its citizens. The Casino provides approximately 500 much-needed jobs to the local community. The majority of these jobs are non-professional positions. The ability to provide the local community with these job opportunities is immensely important given that the City of San Pablo is an impoverished area. The Tribe has also been able to provide significant financial support to the City of San Pablo to assist with law enforcement, provide programs for the City's neediest citizens and to reduce taxes for all of the City's citizen's. Currently, ___ % of the City of San Pablo's general fund comes from money received from the Tribe.

The Tribe currently operates IGT machines. The machines satisfy current legal authority as they are played for prizes with cards bearing numbers or other designations; the player covers or "daubs" the number or designation when objects similarly numbered or designated are drawn; and the game is won by the first person covering a previously designated pattern. The machines further meet the criteria for a technologic aid because they broaden the participation of players (the game is not resident in the device itself, but is rather a server running the same "bingo" game on numerous player terminals, hence a technologic aid). That is, the game of chance, in Johnson Act parlance, is exterior to the device. Thus, these games cannot be considered facsimiles because they are not self-contained copies of the underlying game. Despite the fact that the games "pass muster" under the current legal authority, all of the Tribe's current Class II devices would not be permissible under the proposed Classification Standards.

If the Classification Standards are adopted as currently written, all of the Tribe's currently acceptable electronic bingo games would be prohibited, requiring the Tribe to replace all of its games. Because the Tribe operates only Class II devices, the proposed Classification Standards would effectively shut down the Tribe's Casino. Obviously, such result would have a devastating economic impact on the Tribe and the surrounding community because the Tribe would no longer have the financial means to provide the above-referenced programs or monetary aid and 500 jobs would be lost.

THE NIGC HAS AN OBLIGATION TO CONDUCT ADEQUATE CONSULTATION WITH TRIBES REGARDING REGULATIONS THAT IMPACT TRIBES

As noted by the Tribe at the July 27th meeting, the proposed Classification Standards will have a unique and substantially significant effect on the Tribe because its gaming operations are not merely supplemented by the use of Class II machines, but are, in fact, entirely dependent on the use of Class II machines. As a result, the proposed Classification Standards present the Tribe with a markedly different and more serious concern than that of most other Tribes. Thus, the Tribe believes that proper consultation dictates that NIGC actively involve the Tribe in the rulemaking process. It is for this reason that, in addition to submitting these written comments, the Tribe is specifically requesting that the NIGC engage in ongoing discussions with the Tribe throughout the rulemaking process.[1]

[1] It should be noted that, pursuant to its Government-to-Government Tribal Consultation Policy published on March 31, 2004 in the Federal Register, the NIGC has specifically recognized its obligation to conduct consultation on a

The Tribe is disappointed in the NIGC for disregarding one of the most elemental tenets of the government-to-government relationship by failing to conduct adequate consultation with tribes with respect to the proposed Classification Standards. Given the severe economic impact the Classification Standards will have on the Tribe, and the technical nature of the proposed Classification Standards, it was impossible for the Tribe to fully address the many issues created by the proposed Classification Standards in a very brief one-half hour session. Nevertheless, the Tribe attempted to highlight a few critical issues at face-to-face meeting and will provide further information and comment in this letter. Further, despite the fact that the Tribe is currently providing comment on these Classification Standards, the Tribe believes that it is imperative that the Classification Standards and Technical Standards be reviewed, commented on, and consulted on simultaneously.

It has long been recognized by the Federal Government that the United States has a unique political and legal relationship with Indian tribal governments. In conformance with this unique relationship, the Federal Government recognizes the sovereign status of tribal governments and its obligation to deal with these tribal governments on a government-to-government basis.[2] President Bush himself reaffirmed this responsibility in both his Executive Order 13336 and his Executive Memorandum of September 23, 2004.

In his Executive Memorandum, the President stated that it was "critical that all departments and agencies adhere to these principles and work with tribal governments in a manner that cultivates mutual respect and fosters greater understanding to reinforce these principles." This means that an agency/department's working relationship with tribal governments "fully respects the right of self-government and self-determination due tribal governments." These principles should not be mere rhetoric for the Federal government and its agencies. The implicit intent is for there to be a *working relationship* – this means that the NIGC should not be meeting behind closed doors to devise proposed standards which will have significant impacts on tribal economic development and tribal self-sufficiency and then merely seek "comment" on the standards from tribal governments, but instead should be engaging tribal leaders from the beginning to devise appropriate standards satisfactory to all parties. However, merely engaging tribal leaders in discussion alone is also not sufficient to meet the definition of "consultation." NIGC must also listen to the tribal leaders views such that the input is actually incorporated into successive drafts or versions of the proposed regulations.

In addition to the Executive Orders addressing the appropriate and adequate standards for working consultation and coordination with Indian tribal governments, the NIGC has developed

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government-to-government basis with individual tribes by announcing that the "primary focus of the NIGC's consultation activities will be with individual tribes and their recognized governmental leaders." (69 FR 16979).

[2] See Executive Memorandum of April 29, 1994 on Government-to-Government Relations with Native American Tribal Governments; Executive Order 13175 of November 6, 2000 on Consultation and Coordination with Indian Tribal Governments; and Executive Memorandum of September 23, 2004 on Government-to-Government Relationship with Tribal Governments.

specific policies with respect to tribal consultation.[3] Unfortunately, the NIGC seems not to be following its own policies with respect to this current undertaking. Specifically, the NIGC is required to "consult ...with Indian tribal governments **before** taking actions that affect federally recognized Indian tribes" (emphasis added) and to "assess the impact of agency activities on tribal trust resources and assure that tribal interests are considered before the activities are undertaken."

The NIGC cannot deny the profound impacts to Indian Country (particularly on Tribes such as Lytton that are authorized to engage only in Class II gaming)[4] that will occur if the Classification Standards are passed as currently drafted. They should not, therefore, flout the established governmental law and policy in an attempt to rush this proposed regulation through. The Tribe believes that the NIGC cannot seriously consider a brief thirty-minute meeting with the Tribe to be "consultation" as that effort is contemplated by well-established law and policy.

THE REQUIREMENTS FOR THE RELEASE OF NUMBERS/DESIGNATIONS WILL CREATE AN EXCEEDINGLY SLOW GAME UNAPPEALING TO PATRONS

As the Commission is aware, the heart of the gaming industry is entertainment. This means that it is critical for tribes that games or machines offer appealing and entertaining play to the patrons of their facilities.

Section 546.6(c) of the proposed Classification Standards provides that each release must take a minimum of two seconds. This Section also requires that the numbers/designations be released one at a time. The purported rationale behind this requirement is to give players sufficient time to view the numbers/designations as they are released. However, as the Tribe recently discussed with the Commission, such a requirement is not technically feasible. The Tribe strongly opposes the inclusion of these two requirements in the Classification Standards. Regardless of the NIGC's rationale, these requirements are not supported by IGRA, its legislative history, case law, or the NIGC's own opinions. In fact, the courts have made it clear that the speed of the game is not a deciding factor on whether or not the game is a Class II game. Indeed, speeding up the game of bingo to make it more enjoyable is a time-honored tradition. As a number of panel members at the September 19th hearings pointed out, all of the changes throughout the history of bingo have consisted of enhancements meant to speed up the game to make it more exciting.

At the September 19th hearing, it was clear that the NIGC does not fully understand the effect that these requirements will have on the speed of the game. On at least two occasions, members of the NIGC indicated that these requirements would slow the games down to a maximum of eight seconds. This is incorrect. Given the requirement that there must be at least

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[3] NIGC's Government-to-Government Tribal Consultation Policy, 69 FR 16973 (March 31, 2004) and *Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations with Indian Tribes.*

[4] As the Tribe noted at the July 27th meeting, the State of California to has refused to ratify a Tribal-State Gaming Compact with the Tribe. As a result, the Tribe must rely solely on Class II gaming.

two releases of numbers, and in many instances there will be three or more releases, requiring each release to take at minimum of two seconds would result in each game being extended to a minimum of ten seconds and, in reality, a longer period. This time delay will be exacerbated by the requirement that the numbers/designation be released one at a time because many numbers/designations are released at a time. For example, given the video refresh rate, this requirement would mean that a release having 65 numbers, would take at least six seconds. Thus, these two time delay requirements would add a minimum of sixteen seconds to each game of bingo. While sixteen seconds may, in ordinary terms, not amount to much, in the context of a bingo game, the extension of each game to sixteen seconds or more amounts to a lifetime. As the NIGC well knows, Casino patrons are seeking excitement and entertainment. As many federal courts have observed, the contemporary game of bingo is markedly different from the conventional game of bingo. In so noting, the courts have held that the speed of the game is not a deciding factor on whether the game is or is not bingo. By adding minimum time requirements such as those contained in Section 546.6(c), the NIGC is guaranteeing a game that is exceedingly slow and ultimately less appealing to Casino patrons who are seeking excitement and entertainment and thereby impacting the Tribe's ability to maintain a viable economic undertaking.

Moreover, because the proposed Classification Standards also contain a two-second requirement for each daub opportunity, players are already given an opportunity to view each release. Thus, the additional two-seconds per release only serves to slow down each bingo game for no apparent reason, which will likely result in player boredom and dissatisfaction.

Lastly, as we indicated at the recent session, the requirement that the numbers/designations be released one at a time is vague and ambiguous. The requirement can be read to mean that the numbers/designations must appear on the bingo terminal one at a time or to mean that the numbers must be released from the server one at a time. If, as indicated at our recent meeting, the individual release is to the video display, then as we have discussed above, such a feat is technically infeasible within the two second proposed release time.

In light of the substantial negative effects the above requirements will have on the speed and play of each bingo game (ultimately resulting in a negative effect on player satisfaction), and the lack of justification for this requirement, the Tribe believes these requirements should be removed. If the NIGC insists on maintaining the two-second release requirement, the Classification Standards should, at the very least, be revised to allow the game to continue prior to the expiration of two seconds should players elect to daub prior to that time.

THE COMMON PAY, COMMON PATTERNS AND COMMON PROBABABILITY REQUIREMENTS WILL REDUCE DESIGN FLEXIBILITY AND SERIOUSLY LIMIT THE TYPES OF GAMES THE TRIBE WILL BE ABLE TO OFFER ITS PATRONS

Section 546.6(b) of the Classification Standards requires that in order for players to participate in a common game, and to meet the requirements for the minimum number of players, each player must be eligible to compete for all wining patterns in the game.

Section 546.6(l) of the Classification Standards requires that all players must have an equal chance of obtaining the same set of winning patterns. The probability of achieving any particular winning pattern may not vary based on the amount wagered by the player.

The Tribe strongly opposes these requirements because such requirements will significantly reduce the Tribe's flexibility by limiting its ability to offer varying prize amounts, payback percentages, and game themes. Moreover, these requirements will serve only to limit rather than broaden participation.

One of the key elements to the success of a Casino is the ability to leverage machines for maximum benefit based on location, popularity, and the amount wagered. By requiring that bingo devices can only be linked to other devices with the same pay, patterns and probabilities, the Classification Standards will significantly reduce the potential field of players eligible to be in a common game and the number of game themes which can be offered on the floor, thereby limiting the Tribe's ability to offer varying prize amounts, payback percentages, and game themes.

For example, as is typical in the gaming industry, the Tribe's casino divides its bingo devices into groups of differing payback percentages (i.e., one group may be 96% and another group might be 98%, etc). Currently, players in the same game of bingo can and do participate in common games despite the fact that they are playing games of with different payback percentages. Thus, the player of a bingo device with a 98% payback percentage will have a different probability of obtaining a winning pattern than the player of a bingo device with a 96% payback percentage. If the proposed Classification Standards are adopted as currently written, players in this example will not be able to participate in a common game. Such a requirement will serve only to reduce participation by making it more difficult for a player to find other players to play against, and thus fewer games will be played.

In addition to limiting the Tribe's ability to offer varying payback percentages, the Classification Standards will also limit the Tribe's flexibility to provide multiple game themes. The ability to offer varying game themes is critical to the success of the Tribe's casino. Some players prefer smaller but more frequent payouts, while others prefer larger but less frequent payouts, and finally some players are in between these two groups. As such, the Tribe must have the flexibility to offer its patrons choice to ensure that each player is able to find a machine that satisfies that player's comfort and enjoyment needs.

As stated previously, Casino patrons come to the Casino for excitement and entertainment. To provide its patrons with this excitement and entertainment, the Casino must have the flexibility to operate machines that offer varying game themes, denominations, and payback percentages. The ability to offer varying themes and payback percentages is of particular importance to the Tribe because it has not been able to get a Tribal-State Gaming Compact and thus is permitted to operate only Class II devices. As a result, the Tribe's gaming operation is not merely supplemented by a handful of Class II devices, but is wholly dependent on such devices. Therefore, it is imperative that the Tribe be able to offer its patrons variety. Under the proposed Classification Standards, the Tribe would no longer be able to offer this variety.

THE REQUIREMENTS FOR THE DISPLAY OF THE GAME OF BINGO ARE AMBIGUOUS AND ARBITRARY

Section 546.4(b) of the proposed Classification Standards requires that "the game of bingo ... including the electronic card but excluding any alternative displays, shall fill at least ½ of the total space available for display" (½ Requirement).

As the NIGC is aware, Class II devices come in many shapes and sizes. Some Class II devices utilize one screen to display both the bingo game and the alternative entertainment display. Other Class II devices, like those operated by the Tribe, use two separate screens – one for the bingo game and one for the alternative entertainment display. Given these varying layouts, the ½ Requirement is vague and ambiguous. For example, it is unclear as to whether this provision requires that the screen used for display of the bingo game must itself be ½ of the total display space (i.e., at least the same size as the alternative screen) or whether this means that the various portions of the bingo game (i.e., the electronic card, the summary of game results, the display of number draws, etc) must fill ½ of the display screen used for bingo.

Even if the ½ Requirement were not ambiguous, it is arbitrary. Nowhere in the Indian Gaming Regulatory Act (IGRA), its legislative history, case law is there a requirement that the display of the bingo game be of any certain shape or size. Indeed, the NIGC, in attempting to impose such a requirement, is not only acting contrary to the provisions of IGRA but is acting contrary to its own precedent as many of the Class II devices currently approved by the NIGC, including those used by the Tribe, would be outlawed under the proposed Classification Standards based solely on the ½ Requirement. Further, unlike some of the more technical or software-reliant criteria which is proposed, the ½ Requirement would require massive capital expenditures to replace the terminal consoles.

That being said, the Tribe understands that the NIGC's intention behind this requirement is that players be able to readily see the bingo card and other associated displays of the bingo game. However, the requirement that the display screen be at least ½ of the total display area does not accomplish this goal because this requirement in no way guarantees that the bingo game will be easy to see. For example, if the requirement is read to require that the bingo game must fill ½ of the screen used to display the bingo game, a manufacturer could simply make the display screen of a smaller size, thereby reducing the overall size of the display of the bingo game. Thus, even though the Tribe does not believe that IGRA imposes any requirements regarding the external aesthetics of Class II devices, ensuring that players are able to view the bingo game is more appropriately accomplished by requiring, as the Classification Standards do for the bingo card, that the various elements of the bingo game be of a legible size.

In addition, because many of the Class II devices currently in operation display aspects of the "bingo game" on both the bingo display screen and the alternative display screen, the ½ Requirement would only serve to complicate matters and create uncertainty because it would be very difficult to determine when the ½ Requirement is met given the varying display locations of the bingo game. Such uncertainty is precisely what these regulations are intended to guard against and will likely lead to long, drawn out litigation.

Given the ambiguous and arbitrary nature of the ½ Requirement, the Tribe believes that this language should be removed from the proposed Classification Standards.

THE REQUIREMENT THAT THE GAMING-WINNING PRIZE BE NO LESS THAN 20% OF THE AMOUNT WAGERED NEEDS TO BE CLARIFIED

Section 546.4(j) of the Classification Standards requires that a game-winning prize cannot be "less than 20% of the amount wagered by the player on each card and at least one cent."

This language needs to be clarified by indicating that the game-winning prize must "average" no less than 20% of the amount wagered. Currently, the Tribe's Class II devices are designed to ensure the game-winning prize will average at least 20% of a player's wager; while the player's will most often average more than 20%, it is technically very difficult to design devices that will guarantee that in each and every game, a player will be awarded 20% of his/her wager. The systems used to operate Class II devices are simply too complex to make such a requirement feasible. Thus, unless this language is revised to allow an average of 20%, Class II devices in any form will not be permissible. Such a result is simply unacceptable.

However, the Tribe was pleased to learn at the session that the Commission's interpretation of its own regulations is that it will proceed as if it were an average of 20%, rather than an absolute and would suggest that the NIGC revise the language of the proposed regulations to make this clear.

THE REQUIREMENTS REGARDING THE DISPLAY OF "THIS IS A GAME OF BINGO" ARE VAGUE AND AMBIGUOUS

Section 546.4(d) requires that each Class II device prominently display a message informing customers that the device is a bingo game, or game similar to bingo. While the Tribe does not oppose including such a message on its machines, the current language is vague and ambiguous.

First, the language does not indicate how such message is to be displayed. For example, does it have to be part of the video screen on the terminal or can it simply be added on the outside of the terminal with a sticker, placard, or some similar type of material? Second, while the language requires the message to be two inches in height, it does not indicate how wide the message should be. Further, it is not clear what the rationale or purpose for such a requirement would be. Thus, while the Tribe does not directly oppose placing a message on its machines, it believes that the vagueness of this requirement will create unnecessary confusion and uncertainty.

THE PROPOSED DEFINITION OF "FACSIMILE" IN SECTION 502 IS AMBIGUOUS AND RUNS CONTRARY TO CURRENT LEGAL PRECEDENT

Initially, it is unclear what is meant by "fundamental" characteristics or how these would be incorporated into the game. More importantly, this definition seems to ignore the federal case

law in which the Courts have repeatedly found that where the game of bingo or game similar to bingo is played utilizing an electronic device in which the game play itself requires an exterior server and additional players, such a device is considered an "electronic aid" to the play of the game.

The NIGC's currently proposed definition could be read to mean that all bingo, lotto or other such games played in an electronic format are considered facsimiles. Such a result would be contrary to the intent behind IGRA and severely impact tribes in how they would be allowed to offer Class II gaming. As such, the Tribe requests that the NIGC re-evaluate its proposed definitions and revise them such that they comport with both IGRA, Congress's intent behind IGRA and current federal case law interpreting the meaning of "facsimile" as used in IGRA.

THE "GRANDFATHERING" PROVISION AT SECTION 546.10(3) IS UNREALISTIC

The six month timeline proposed by the proposed regulations is insufficient to allow tribes and manufacturers to actually redesign, manufacture, certify and implement games in conformance with the proposed regulations, as such, the Commission should propose a more realistic time period.

CONCLUSION

Congress made it clear in the legislative history of IGRA that it intended to give the Tribe's maximum flexibility to use technologic aids and that such technology does not transform Class II bingo into Class III gaming as long as such technology "broaden[s] the potential participation levels and is readily distinguishable from the use of electronic facsimiles in which a single participant plays a game with or against a machine rather than with or against other players." S. Rep. 100-446, 1988 U.S.C.C.A.N. 3071, 3079. Thus, it is clear that Congress intended that the Tribe's be permitted to adapt Class II bingo devices as technology improved so long as such technology did not transform the devices from games between multiple players into stand-alone devices played by one player against the machine itself. Nowhere in the legislative history does Congress even hint that anything other than this limited distinction can form the basis of transforming a Class II bingo device into a Class III "slot" machine. Despite this, the NIGC has seen fit to propose requirements which in no way relate to this distinction and, in many instances, serve only to create additional uncertainty and complicate the regulation of Class II gaming. Indeed, the one and only thing that the proposed Classification Standards will do is ensure that most, if not all of the Class II devices currently in operation, including those currently approved by the NIGC, would no longer be acceptable. This would mean that the Tribe would have to replace all of its Class II devices, which transition would take significant amounts of time and money. Moreover, the only allowable replacement devices under the proposed Classification Standards would be exceedingly slow, less aesthetically pleasing, less enjoyable, and thus, far less appealing to patrons and dramatically less profitable because fewer games will be played and fewer players will participate. The resultant effect would be a severe economic hardship on the Tribe (and the surrounding community) given that its Casino operates only Class II devices.

In addition, it is the Tribe's belief that some of the requirements are not technically feasible and, even if they are, the extent of design modifications necessary to meet the proposed Classification Standards would be so enormous that it would take the device manufacturers a significant period of time to design and manufacture completely new devices. This significant time period would be extended greatly by the game certification requirements of the proposed Classification Standards. In the meantime, the Tribe would be unable to operate its current Class II devices and would have to invest significant amounts of money for brand new devices, which would result in a catastrophic loss of income to the Tribe and the loss of a large number of jobs and financial aid to the City of San Pablo.

In sum, the Tribe urges the NIGC to reconsider the proposed Classification Standards and requests that the NIGC undertake a comprehensive economic study in consultation with Indian tribes and work with the device manufacturers to develop a viable prototype before it seeks to implement any new regulations governing Class II gaming.

The Tribe appreciates the opportunity to submit these comments, although it does not consider such submission to be tantamount to an adequate consultation by the NIGC. The Tribe looks forward to future discussions with representatives of NIGC as the rulemaking process continues.

Sincerely,

Kathryn A. Ogas

Kathryn A. Ogas
Attorney for the Lytton Band of
Pomo Indians